In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 982

METROPOLITAN LIFE INSURANCE COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

Section 9(c)(5) of the National Labor Relations Act provides that, in determining whether a unit is appropriate for collective bargaining, "the extent to which the employees have organized shall not be controlling." The National Labor Relations Board found a unit consisting of the Company's two district offices in Wilmington, Delaware, but excluding a district office in Dover, Delaware, over forty miles away, to be appropriate. The question presented is whether the Board's selection of this unit, concededly proper on the basis of the reasons given by the agency, may be held to have been controlled by the extent to which the employees have organized, in violation of Section 9(c)(5), because the Board, in six other cases involving employers in the insurance industry, consistently approved the unit sought by the union.

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The court below answered this question in the negative. Its decision is in accord with decisions of the Fourth and Sixth Circuits on the same legal issue. *National Labor Relations Board* v. *Quaker City Life Insurance Co.*, 319 F. 2d 690 (C.A. 4); *Metropolitan Life Insurance Co.* v. *National Labor Relations Board* (C.A. 6), No. 15366, decided April 11, 1964. See also *National Labor Relations Board* v. *The Western and Southern Life Insurance Co.*, 328 F. 2d 891 (C.A. 3). It is, however, in conflict with the decision of the First Circuit in *Metropolitan Life Insurance Co.* v. *National Labor Relations Board*, 327 F. 2d 906.

The government believes that this conflict warrants resolution by this Court, and accordingly has filed a petition for certiorari to review the First Circuit decision, No. 1128, this Term. If that petition is granted, we do not oppose the granting of the present petition, since it presents the same issue.

Respectfully submitted.

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